IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 13TH DECEMBER 2006 / 22ND AGRAHAYANA 1928

WP(C).No. 25122 of 2006(N)

PETITIONERS:

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1. K.P.CHANDRAN, HIGH SCHOOL ASSISTANT,
   K.R.HIGH SCHOOL, PATHIRIYAD, KANNUR DISTRICT.

2. E.VALSAN, HIGH SCHOOL ASSISTANT,
   K.R.HIGH SCHOOL, PATHIRIYAD, KANNUR DISTRICT.

BY ADV. SRI.P.V.JYOTHI PRASAD

RESPONDENTS:

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1. V.M.GANGADHARAN, HEADMASTER,
   K.R.HIGH SCHOOL, PATHIRIYAD, KANNUR DISTRICT.

2. THE MANAGER, K.R.HIGH SCHOOL,
   PATHIRIYAD, P.O.SANKARNELLUR, KANNUR DISTRICT.

3. DISTRICT EDUCATIONAL OFFICER,
   THALASSERY.

4. STATE OF KERALA, REPRESENTED BY
   THE SECRETARY TO GOVERNMENT, GENERAL EDUCATION
   DEPARTMENT, THIRUVANANTHAPURAM.

R1 BY ADV. SRI.K.T.SHYAMKUMAR
R2 BY ADV.SRI.V.RAJENDRAN
R3 & R4 BY GOVT. PLEADER SMT. M.R. SREELATHA.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/12/2006 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC. 25122/2006.

APPENDIX

PETITIONERS' EXTS:

EXT. P1 : TRUE EXTRACT OF SENIORITY LIST OF H.S.AS OF THE SCHOOL.

EXT. P2 : TRUE COPYOF THE GOVT. ORDER DATED 30.3.2006.

EXT. P3 : TRUE COPYOF GOVT. ORDER DATED 30.3.1988.

EXT. P4 : TRUE COPY OF GOVT. ORDER DATED 10.1.1994.

EXT. P5 : TRUE COPY OF GOVT. ORDER DATED 10.2.1998.

EXT. P6 : TRUE COPY OF JUDGMENT DATED 27.9.2005 IN O.P. 11343/98.

EXT. P7 : TRUE COPYOF JUDGMENT DATED 14.2.2006 IN W.A. 2690/06.

RESPONDENTS' EXTS:

EXT. R1(a) : TRUE COPYOF THE APPLICATION DATED 2.6.1981 FILED BY THE 1ST RESPONDENT BEFORE THE GOVERNMENT.

EXT. R1(b) : TRUE COPY OF THE LETTER DATED 6.7.1981 ISSUED BY THE GOVERNMENT ADDRESSED TO SRI. K.P. NOORUDDIN MLA.

EXT. R1(c) : TRUE COPY OF THE G.O.(RT) NO. 1233/86/G. EDN. DATED 5.4.1986.

EXT. R1(d) : TRUE COPY OF THE ORDER DATED 30.3.1988 ISSUED BY THE COMMISSIONER FOR GOVERNMENT EXAMINATIONS.

K.M.JOSEPH, J.

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WP.(C) No.25122 OF 2006

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Dated this the 13th day of December, 2006

JUDGMENT

Case of the petitioners in brief is as follows:

They are High School Assistants in an aided School. They entered service on 7.6.1978 and 15.7.1978 respectively. First petitioner is due to retire on 31.3.2007, while the second petitioner is due to retire on 31.3.2008 and they are the senior most HSAs. The first respondent is the Headmaster of the School. He entered service as HSA on 8.6.1976 and as per the entries in the seniority list he was due to retire on 31.3.2006 and on his retirement the first petitioner would have been promoted as Headmaster and on his retirement on 31.3.2007 the second petitioner would have been promoted as Headmaster. In fact it is stated that the first petitioner was appointed as the Chief Superintendent of S.S.L.C. Examinations in view of the impending retirement of the first respondent on 31.3.2006. It is stated that during the first week of April petitioners came to understand that the Government of Kerala has issued orders permitting the first respondent to continue in service for two more years. It is stated that it is only recently they came to know

that the first respondent managed to get an extension of service by altering his date of birth in the Service Book. It is stated to be on 30.3.2006, just before the retirement, that an order is issued directing alteration in the Service Book. Ext.P2 is the Government Order dated 30.3.2006, which is in challenge. Ext.P2 is issued pursuant to a judgment of this court, which is produced as Ext.P7. Ext.P3 evidences the correction of the SSLC Book of the first respondent. It is stated that Ext.P3 order has become final, but that does not entitle him to make consequential correction in the Service Book. He submitted application on 6.3.1992 for alteration of date of birth. He took four years after getting the SSLC Book corrected in March, 1988. The claim of the first respondent for correction in the Service Book was rejected by Ext.P4. First respondent filed a petition before the Government to review Ext.P4 order, which was dismissed by Ext.P5. These orders came to be challenged in O.P.11343 of 1998. The State of Kerala represented by the Chief Secretary was the sole respondent. Petitioners submit that it ought to have been dismissed for non-joinder of necessary parties as even the second respondent and third

respondent, who are the authorities to counter sign the Service Book were not impleaded. By Ext.P6 the learned Single Judge quashed Exts.P4 and P5 and directed the Government to correct the Service Book on the basis of Ext.P3 order. It is this judgment, which was set aside by the Division Bench in Ext.P7 judgment. I extract the relevant portion as hereunder.

> "It is well settled that the Government's residuary powers remain in tact notwithstanding the correction that had been permitted by the competent authority. It is also well settled that the correction in the records does not automatically entitle the Government servant to get his date of birth corrected in the service records.
>
> In the above circumstances, we set aside the judgment. However, since the impact of the correction had not been noticed of the Government appropriately, and since the application for correction made by the petitioner was within time stipulated by Government orders, we direct that further orders are to be passed in the matter if petitioner submits a representation directly to the Government within a period of one month from today with all supporting documents. In that case, the representation is to be disposed of as far as possible within a period of three

months from date of its receipt."

2. Counter affidavit is filed by the first respondent, inter alia stating as follows:

On coming to know about the error in the SSLC Book, the first respondent made an application on 2.6.1981 before the Government for correction of date of birth in the service records as Ext.R1(a). Government issued Ext.R1(b) intimating that the application was under consideration of the Government. Thereafter he was told that it can be corrected only after SSLC Book was corrected and he was directed to file application for correction of date of birth in the SSLC Book. Application was allowed by the Government for condonation of delay in applying for correction of date of birth vide Ext.R1(c). First respondent then filed application to correct date of birth in the school records before the Commissioner for Government Examinations, which was allowed by Ext.R1(d) dated 30.3.1988. Thereafter petitioner filed application for corresponding correction in the service records on 6.3.1992. It is contended among other things that petitioners do not have locus standi.

3. Learned counsel for the petitioners Sri. P.V. Jyothi Prasad would submit that the impugned order is clearly illegal. He would submit that the mere correction of the entries in the SSLC Book could not automatically result in the correction of the entry in the Service Book. It is pointed out that Government was duty bound to consider the interests of the teachers like the petitioners, whose interests would be jeopardised by any correction particularly when the first petitioner was due to retire on 31.3.2006. Learned counsel relied on the following decisions reported in **Devaki Nandan Verma v. State of Haryana** (1995 Supp (3) SCC 431), **State of Gujarat v. Vali Mohamed** (2006(3) K.L.T. SN 83 page 61), **State of Punjab v. S.C. Chadha** ((2004) 3 SCC 394), **State of T.N. v. T.V.Venugopalan** ((1994) 6 SCC 302) and in **Secretary & Commissioner v. R. Kirubakaran** (1994 Supp (1) SCC 155). He also relied on the decision of the Division Bench reported in **Sahadevan v. State of Kerala** (1987(2) K.L.T. 143). He referred me to Ext.P4. He submitted that in Ext.P2 there is no reference to the matters which were referred to by the Government in Exts.P4 and P5. He submitted that Ext.P4 as

confirmed by Ext.P5 has become final and it is not open to the first respondent to re-agitate the entire matter. He would submit that the decision of the first respondent is opposed to the principles, which govern the issue. It is also submitted that Exts.P4 and P5 were not borne in mind when Ext.P2 order was passed. He also submitted that the first respondent has not produced any document in support of his claim and that the original application itself is not to be seen. He relied on Ext.P7 judgment in this connection.

4. Per contra, learned counsel for the first respondent Sri.K.T.Syam Kumar would contend that it is not open to the petitioners to maintain this writ petition as they are not possessed of locus standi. In this connection he relied on the judgment of the Apex Court in **Devaki Nandan Verma's Case.** He would submit that the first respondent was pursuing the matter from a very early stage as can be seen from the documents produced and the judgments rendered in his case. In particular he would point out that in Ext.P7 judgment this court has categorically found that the application made by the petitioner is within the time provided for making the application.

5. Learned Government Pleader also supported the order submitting that the application of the respondent was filed well within the time and there is no basis for interfering with the order.

6. Counsel for the Manager Sri. V.Rajendran supported the petitioners. He would submit that even the Manager was not made a party in the litigation. He would also submit that having regard to the decisions rendered subsequent to **Devaki Nandanan Verma's Case** the interests of third parties cannot be brushed aside and therefore the judgment in the said case should not govern the facts of this case.

7. As far as the decisions of the Apex Court relied on by the petitioners are concerned, they appear to be cases where the High Court or the Tribunal had interfered with orders refusing correction of the date of birth and this was challenged before the court or the Tribunal. In such circumstances, the court no doubt has come to interfere with the orders directing correction. In all these cases the court interfered at the instance of the State or the employer. In none of these cases the court has countenanced a plea raised by a third party. **Sahadevan v. State of Kerala** (1987(2) K.L.T. 143) was a case where the application

for correction was rejected by the Government on the ground that the correction in the School records does not cast an obligation on the Government to carry out that correction in the service records as a matter of course. No doubt the court held as follows:

> "It is necessary to point out that the considerations that weigh with the Government at the time of correction of the date of birth in the SSLC register or in the school records are likely to be different from considerations that weigh in the matter of correcting the date of birth in the service register. There are several factors that come into play in regard to the correction of the date of birth in the service register. It is therefore that the State Government advisedly stated in the order of 1975 that there cannot be any automatic correction of the date of birth in the service register. It is necessary to point out that on the representation regarding age made by the applicant at the time of recruitment that he would have been selected for appointment into Government service. In many cases the age could have been the relevant factor which would have titled the balance in the matter of recruitment to a particular post. It is also not unlikely that many persons would not have applied for the post if it is known that a younger person has already entered the services as he may not have

> future prospects and vice versa. These are matters which may weigh in mind in dealing with matters of delay in filing the application for correcting the date of birth. It is not a question of abstract proposition but the question of looking into the whole matter in its proper perspective for, it may have repercussions not only in regard to the concerned person but in regard to other government servants. It is for this reason that the State Government has reserved its right to judge each case on merits and decide for itself as to whether the correction should be allowed to be carried out in the service register having regard to the relevant factors. Hence it is not possible to take the view that the State Government has committed any error in rejecting the application of the petitioner on the ground of delay."

That is a case where the application for correction of date of birth in the service register of the petitioner therein was made on 12.9.1986 at the fag end of his service as he was due to retire on 31.3.1987. The Government found that there was no explanation for the delay and the court declined to interfere with the order of the Government.

8. It is to be noted in the facts of this case that the first respondent had moved an application Ext.R1(a) in the year 1981. By

Ext.P3 that correction was effected in the SSLC Book in 1988. Admittedly the first respondent had filed an application for correction on 6.3.1992, nearly 14 years prior to the date of his superannuation as per the uncorrected date of birth. Therefore the principle in the said case can have no application. The picture is almost the same in the decisions of the Supreme Court. I note that the decision of the Apex Court in **State of Gujarat's Case** was also a case where the Supreme Court did not approve of the court or the Tribunal issuing direction on the basis of the materials ordering correction of date of birth. The court found that the court has to be fully satisfied that there is real injustice to the persons concerned and that the claim for correction has been made in accordance with the procedure prescribed. Apparently this was also a case where the employee failed to get his application allowed by the Government. But the court intervened and this intervention was found impermissible in the facts of the case. I would think that quite apart from the facts of this case the petitioners have to fail on a surer ground and this is the principle laid down by the Apex Court in the decision reported in **Devki Nandan Verma's Case**. Therein the court held as

follows:

> "We have heard learned counsel for the parties. The High Court quashed the order correcting the date of birth of the appellant on the ground that an opportunity of hearing should have been given to the petitioner before any order changing the date of birth of the appellant could be passed by the State Government. We are at a loss to understand as to how and on what logic the High Court imported the rules of natural justice in a matter where it has not relevance at all. The least we can say is that the High Court fell into patent error almost bordering perversity in interfering with the order dated 18.6.1992 on the ground that it should have been passed after hearing the affected persons. When correction regarding date of birth is made in the service record of a person the State Government is doing what is required under law. A person has a right to continue in service till he attains the age of superannuation. When wrong date of birth is entered in the service record the right of the person to remain in service till superannuation is obviously infracted. Rectification of the date of birth is a matter between the person concerned and the State Government and no other person has locus standi to prefer caveat in such a matter."

9. It is crystal clear that going by the aforesaid decision, the petitioners in this case would have no locus standi as held by the Apex Court. It is contended that their chance of promotion is affected by the correction. But that will not confer locus standi on the petitioners to challenge Ext.P2. Correction of date of birth in this case in the service record is based on the correction effected in the SSLC Book issued by the Commissioner as early as in 1988. This is not in challenge in this case. First respondent would contend that there are other materials also. No doubt, this is disputed by the petitioners. Whatever that be when the question arises as to whether the writ petition is maintainable at the instance of the petitioners and that question is to be answered against the petitioners in the light of the judgment referred above, in fact I would think that petitioners cannot be permitted to impugn Ext.P2 order. It is simply a case where the writ petition itself is not maintainable at their instance. Learned counsel for the petitioners would submit that even assuming for a moment that Ext.P2 cannot be challenged in the light of the other judgments, the second prayer may be allowed, namely that the petitioners may be considered for

appointment as Headmaster and at best the first respondent can continue as a teacher. I would think that in view of the finding that the petitioners have no locus standi, this contention is not available. Once Ext.P2 is found to be unassailable, I think that it is not open to the petitioners to contend that the first respondent should be called upon to continue as a teacher and the petitioners should be promoted as Headmaster in his place. On a whole, I would think that this is a case where the petitioners have not made out any case for interference.

Accordingly, the writ petition fails and it is dismissed.

(K.M. JOSEPH, JUDGE)

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K.M.JOSEPH, JJ.

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W.A. No. OF

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JUDGMENT

Dated this the day of February, 2006.